107

Supreme Court, U.S.
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NO. 08-491 AUG 4 - 2008

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IN THE

SUPREME COURT OF THE UNITED STATES

RONALD ELIOT GAY, & WYLMA GAY COOLEY,
PETITIONER'S

VERSUS

JANET HUNT, *ET. AL.*, RESPONDENTS

ON THE PETITION FOR *WRIT OF CERTIORARI*
TO THE HONORABLE RHODE ISLAND SUPREME
COURT

JOINT PETITION FOR A *WRIT OF CERTIORARI*

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DATED: OCTOBER 10, 2008

Questions Presented for Review:

Petitioners, Ronald Eliot Gay and Wylma Gay Cooley, believe that their, and their Great Uncle Art Hadley's fifth and fourteenth amendment rights to "*due process of law*" were violated when the Honorable Rhode Island Supreme Court improperly awarded Art Hadley's estate to non-relatives primarily via an arbitrary departure from the historical "*process of law*" that first "*seeks and then effectuates testator intention.*"

The judicial philosophy bolstering this departure is one that considers case laws as being *de facto* statutes.

For the most part, the following questions of federal interest[1] have arisen from the inherent and inevitable conflicts thus existing between "case laws" and the constitutional guarantee to the "*due process of* (statutory) *law.*"

A. Primary Questions of Federal Interest:

1. Does a testator have a right to have his intentions later honored as an "*unalienable*" or pre-existing right as affirmed by the common law, The Declaration of Independence, and centuries of court precedents?

2. Has a Court violated the testator's and his whole blood heir's fifth and fourteenth amendment rights to *"due process of law"* when it has

[1] Several of the presented questions are questions of first impression.

arbitrarily chosen to change the historical *"processes"* of law by departing from centuries of past practice?

3. May a Court award a fee to the trustee from the principle of the trusts when the clearly expressed intentions of the testator forbid such an action?

B. Subsidiary Questions of Federal Interest Arising from the Improper Use of Case Law:

1. May a Court ignore its essential and traditional responsibilities because the precedent of one case that it calls "the law" seems to offer a quick solution even though existing precedents of other cases contradict the one, including precedents from the United States Supreme Court, and the one does violence to the other?

2. May a case precedent be allowed to overreach and overrule a legitimate intention of a Legislature when that intention is expressly stated in the statutes?

3. May a case precedent be considered valid when it, in its original declaration, failed to properly respect the context of its specific case to the law, and it is then over inclusive, and, technically, an error of law?

4. May a case precedent be called "the law" when its peculiar causal circumstances are significantly different from the circumstances of

a case to which it is applied?

5. To what extent can a precedent be called "the law," when the legislature has not enacted that precedent?

6. May a State Supreme Court approach law and rule in one fashion, while other jurisdictions have a different approach and different rulings from the same or similar laws?

7. May a State Supreme Court choose to overlook other studies of law and case law precedents that are contradictory to its own aims when those studies and precedents are legitimate to the argument and unopposed by any other briefs or arguments.

8. May the existence of a certain case precedent be sufficient reason for a Court to then justify overlooking a petitioner's arguments?

C. Specific Decisions of the Rhode Island Supreme Court's Ruling that are being Challenged:

1. As to whether, or not, it was proper to award Art Hadley's January 24, 1933, Testamentary Trust to the "1941" heirs as follows: One-half to the estate of Frances Hadley, one-quarter to the estate of Thomas Hadley, and one quarter to the estate of Sarah Hadley.

2. As to whether, or not, it was proper to award Art Hadley's January 15, 1936, Living Trust in

equal shares to Janet Hunt and Lucille Foster.

3. As to whether, or not, Rhode Island law grants to heirs-at-law *per stirpes*, or *per capita*. The Court did not address this issue because this petitioner lost.[2]

4. A lack of a decision by the Court as to, whether, or not, the trustee committed a breach, or breaches of trust.

[2] Petitioner presents the *per stirpes* vs. *per capita* issue to preserve his right to later present it should he be granted *certiorari*.

All Parties to the Proceeding:

A. Petitioners:

1. Heirs-at-law of their Great-uncle, Art Hadley. (Brother and Sister):

   Ronald Eliot Gay, *pro se*
   31 West Church Street
   Evansville, Wisconsin 53536
   Home: (608) 882-5576, Cell: (608) 490-0224

   Wylma Gay Cooley, *pro se*
   517 North 2900 East
   Roberts, Idaho 83444
   Home: (208) 228-3306, Cell: (208) 589-8968

B. Respondents:

1. Heirs-at-law of their Great-uncle, Art Hadley. (Sisters and 1st Cousins of Petitioners)

   Allyson Gay, Wendy Gay, Sheila Gay Franklin, Diana Gay Robertson, Suzan Beyer, Robert Seeley, Stephen Gay, Nancy Miller, Cynthia Gay (deceased, represented by her daughter Sarah Gay Dagher), represented by:

   John Pfarr, III, Esq.
   Pfarr and Wallin
   37 Sunset Terrace
   Essex, Ct 06426
   (860) 767-6555

   Lauren E. Jones, Esq.
   72 South Main Street
   Providence, RI 02903
   (401) 274-4446

2. The adult adopted daughters of Thomas Hadley: Janet Hunt, and Lucille Foster, represented by:

   John Harpootian, Esq.
   Paster & Harpootian
   1000 Chapel View Blvd. Suite 220
   Cranston, Rhode Island 02920
   (401) 455-9800

3. Estate of Thomas Hadley, represented by:

   James A. Bigos, Esq.
   1725 Mendon Road
   Cumberland, Rhode Island 02865
   (401) 334-4354

4. Heirs-at-law of Francis Hadley, who was Art Hadley's wife.

   Stephen R. Lucas, Jeffrey C. Lucas, Fay C. Drummond, R. Carol Justice, Jane Cranston, S. Bruce Allsop, and Winford T. Frady, Jr. also administrator of the estates of Donald Lucas (deceased), and Raymond J. Harrison (deceased), represented by:

   Arthur M. Read, II, Esq.
   Gordin, Tobin, & Read
   Suite 315E, 300 Centerville Road
   Warwick, Rhode Island 02888
   (401) 739-2020

5. Heirs-at-law of Francis Hadley, who was Art Hadley's wife.

Clair Perry, Elizabeth Perry Robinson, Brigette Perry Young, Sigrid Redden, Sharon Perry Glover, and Eugene Perry, Jr. represented by:

Edmund C. Bennett, Esq.
50 South Main Street
Providence, Rhode Island 02903
(401) 421-1150

6. Estate of Sarah Hadley, Marcia Hanaran, Executrix, represented by:

Paul A. Brule, Esq., and Scott Diamond, Esq.
Walsh, Brule, & Associates
1334 Mendon Road
Cumberland, Rhode Island 02864
(401) 334-4545

7. Trustee: Fleet Bank of Providence, Rhode Island, represented by:

Leon Boghossian, III, Esq., and
David Barricelli, Esq.
Hinckley, Allen, & Snyder, LLP
1500 Fleet Center
Providence, Rhode Island 02903
(401) 274-2000

C. Courts:

1. Supreme Court of the United States
Office of the Clerk
1 First Street N. E.
Washington, DC 20543-0001
(202) 479-3011

2. Rhode Island Supreme Court
   250 Benefit Street
   Providence, Rhode Island 02903
   (401) 222-3274

3. Rhode Island Superior Court
   250 Benefit Street
   Providence, Rhode Island 02903
   (401) 222-3250

D. Government Agencies, Parties to Proceedings:

1. The Office of Attorney General of Rhode Island
   The Honorable Patrick C. Lynch,
   Attorney General of Rhode Island
   150 South Main Street
   Providence, Rhode Island 02903
   (401) 274-4400

E. Government Agencies, not Parties to Proceedings, but Copied:

1. The Office of the Governor of Rhode Island
   The Honorable Donald L. Carcieri
   Governor of Rhode Island
   82 Smith Street
   Providence, Rhode Island 02903
   (401) 222-2080

2. The Office of the Rhode Island Senate President
   The Honorable Senator Joseph Montalbano
   Senate President of Rhode Island
   Room 318 State House
   82 Smith Street
   Providence, Rhode Island 02903

(401) 222-6655, fax (401) 222-2967

Attention: John Flynn

3. The Office of the Speaker of the House of Representatives of Rhode Island
The Honorable William J. Murphy
Speaker of the House of Representatives of Rhode Island
Room 323 State House
82 Smith Street
Providence, Rhode Island 02903
(401) 222-2466

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District of Columbia *et al.* v. Heller, No. 07-290, 554 U.S. ____, United States Supreme Court, (2008).

Dodge v. State, 43 A.2d, 242, Rhode Island Supreme Court, (1945).

Doe, Lessee of Poor v. Considine, 73 U.S. 458, United States Supreme Court, (1867).

Gonzalez, Fermin A., Estate of, 855 A.2d 1146, Supreme Judicial Court of Maine, (2004).

Hanna Fitche, *et. al.* v. Cecil Brown, et. Al., United States Supreme Court, (1908).

Henry B. Rodgers *et al.* v. Daniel Rodgers *et als.*, 11 (R.I.) 38, (1874).

Industrial Trust Company v. Hall, 18 A.2d 629, Rhode Island Supreme Court, (1941).

McCanna *et al.* v. Hanan *et al.*, No. 825, 49 R.I. 349, 142 A. 609, (1928).

Redmond v. Hanover, 484 A.2d, 906, Rhode Island Supreme Court, (1984).

Robinson *et. al.* Appellants v. The Lessee of Adams, 4 U.S. Append. XII, Court of Errors and Appeals of Delaware, (1788).

Rhode Island Hospital Trust Company v. Hopkins, 172, A.2d 345, Rhode Island Supreme Court, (1961).

Silsby, Alice J., Estate of, 914 A.2d 703, Supreme Judicial Court of Maine, (2006).

Sisson *et. al.* v. Seabury, 1 Sumn. 235, 22 F.Cas. 238, No.12, 913, Circuit Court Rhode Island, (1832).

Tinney v. Tinney, 799 A.2d 235, Rhode Island Supreme Court, (2002).

1 Sumn. 235, 22 F. Cas. 238.

B. CONSTITUTIONS:

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D. RHODE ISLAND STATUTES:

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R.I.G.L. § 15-7-16: Inheritance by and from adoptive kindred.

R.I.G.L. § 33-1-1: Real estate descending by intestacy to children or descendants, parents, or brothers and sisters.

R.I.G.L. § 33-6-30: Partial intestacy.

E. TREATISES AND OTHER AUTHORITIES:

Blackstone, Sir William, Knight. Commentaries of the Laws of England in Four Books, (Original Publishing Unknown). Quotes are from Reprints by George Chase, (1914), and William Draper Lewis, (1897).

Schervish, Paul G, & John J. Havens. Millionaires and the Millennium: New Estimates of the Forthcoming Wealth Transfer and the Prospects for a Golden Age of Philanthropy. Social Welfare Research Institute, Boston College, Boston, Massachusetts. 1999.

Stormer, John A. Betrayed By The Bench. Florissant, Missouri: Liberty Bell Press, 2005.

Citations of Official and Unofficial Reports of Opinions and Orders:

A. Rhode Island Superior Court Orders (Supplied in Appendix):

1. Bench Decision: Justice Rubine, March 9, 2005. M.P. No. 2002-6899.
2. Order: Justice Rubine, April 15, 2005. M.P. 2002-6899.
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B. Rhode Island Supreme Court Orders (Supplied in Appendix):

1. Opinion: Chief Justice Williams, April 7, 2008. No. 2005-2004-Appeal. (PM 02-6899).
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C. Rhode Island Supreme Court Mediated Settlement Program Orders (Not supplied in Appendix):

1. Order: Retired Chief Justice Weisberger, January 24, 2007. No. 05-2004-A.
2. Supplemental Order: Retired Chief Justice Weisberger, May 21, 2007. No. 05-2004-A.

Statement of the Basis for Jurisdiction:

A. Judgment to be Reviewed:

Fleet National Bank *et. at.* v. Janet Hunt *et. al.*, No. 2005-204-Appeal. (PM02-6899). Rhode Island Supreme Court, (April 7, 2008)[1]

B. Order Denying Rehearing:

Fleet National Bank. *et. al.* v. Janet Hunt, *et. al.*, No. 2005-204-A. Rhode Island Supreme Court, (May 7, 2008)[2]

C. Due Date for *Writ of Certiorari*: August 5, 2008.

D. Sixty (60) Days from Clerk's August 12th, 2008 Extension Letter. New Due Date October 10, 2008.

E. Rule 12.5 is inapplicable.

F. Statutory Provisions Granting Jurisdiction:

1. The United States Constitution, Article III, Sections 1-2, and its fifth and fourteenth amendments.
2. Case precedents, in that three centuries of case precedents clearly demonstrates jurisdiction, in that this Honorable Supreme Court has, can, and will hear equity cases as necessary.

Supreme Court jurisdiction over petitioner's case

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[1] Appendix: Pages 22-37.
[2] Appendix: Page 38.

arises not from statutory provisions, but directly from *"under this* (United States)*Constitution,"* because of Rhode Island's violation of his, his sister's, and his great uncle Art Hadley's Constitutional *"due process of law"* protections.

The Constitution grants that, *"The* (Supreme Court's) *judicial Power shall extend to* ***all*** *Cases, in Law and* ***Equity****, arising under this Constitution, ... to Controversies ... between a state and citizens of another state; ...between a state, or the citizens thereof, ..."*

Petitioner appeals directly to the Constitution for several reasons. Three being:

1. Violations of constitutional rights are defended by the Constitution, not necessarily by statutes.
2. Construction instructions for wills are not defined by statutes. They are defined by those foundational principals from which the Constitution and American law has arisen primarily, natural justice, and the common law, as witnessed by centuries of Court decisions.
3. The modern day phenomena, not addressed by statutes or court decisions, in which precedents are becoming unchallengeable *de facto* statutes.

G. Rule 29.4(b) is inapplicable.

H. Rule 29.4(c) seems to be applicable and 28 U.S.C. §2403(b) may apply.

Petitioner questions not the constitutionality of any Rhode Island Statutes which is 29.4(c)'s object, but, however, a perplexing problem arises when courts consider case precedents to be the law as Chief Justice

Williams demonstrates, "... the *law set forth in prior cases ...*"[3]

Subjectively applied precedents have the same powers and effects as statutes, yet they lack the essential clarity, congruency, and specific applicability that statutes have because statutes have legislative process origins.

Precedents then become *de facto* statutes, which is a serious problem!

The Attorney General of Rhode Island is notified by this petition, and also by a specific letter copied to all.

The Attorney General was not informed, pursuant to 28 U.S.C. §2403(b), by either the Superior or Supreme Court that the Constitutionality of any statutes of Rhode Island were in question. The issue was indefinable prior to the Rhode Island Supreme Court's decision because the basis of its decision was then not known.

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[3]Fleet National Bank *et al.* v. Janet Hunt *et al.* No. 2005-204-Appeal, (PM 02-6899), Rhode Island Supreme Court, (April 7, 2008). Appendix : page 28. "*The law,*" Chief Justice Williams referred to as, "*set forth in prior cases*" is case law.

Constitutional Provisions and Statutes:

A. U. S. Constitution: ARTICLE III, Sections 1- 2(a).

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority:-to all Cases affecting Ambassadors, other public ministers and Consuls:-to all Cases of admiralty and maritime Jurisdiction:-to Controversies to which the United States shall be a Party:-to Controversies between two or more States:[-between a State and citizens of another State:-between Citizens of different states:-between Citizens of the same state claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.]

B. U. S. Constitution: Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a

presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger: nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law: nor shall private property be taken for public use without just compensation.

C. U. S. Constitution: Amendment XIV, Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws.

D. Rhode Island General Laws:[4]

1. R.I.G.L. § 9-14-25: **Expenses and counsel fees paid out of decedent's or trust estate.**

– In any civil action or other proceeding wherein construction of a will or trust deed or any part thereof is asked, there may be allowed to each of the parties defendant brought in by the action or

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[4] Note: Unaddressed Rhode Island General laws are presented because they are important if *certariori* is granted.

other proceeding, applying therefor, such reasonable sum for expenses and on account of counsel fees as the court in which the case is pending shall deem proper; the allowance shall be taxed as costs in the cause and be paid out of the estate or fund in the hands of the complainant concerning which estate of fund the construction is asked.

2. R.I.G.L. § 15-7-16: **Inheritance by and from adoptive kindred.**

– (a) A child lawfully adopted shall be deemed, for the purpose of inheritance by the child and his or her descendants from the parents by adoption and the lineal and collateral kindred of the parents by adoption, and for the purpose of inheritance by the parents of adoption, and the lineal and collateral kindred of the parents by adoption, from the child and his or her descendants, and for all other legal consequences and incidents of the natural relation of parents and children, except as provided in § 15-7-17, the child of the parents by adoption the same as if he or she had been born to them in lawful wedlock. In the construction of any instrument, whether executed before or after May 8, 1956, a child so adopted and the descendants of the child shall be deemed within a limitation to the lawful heirs, issue, children, descendants, or the like, as the case may be, of the parent or parents by adoption, unless a contrary intention shall appear by the terms of the instrument or unless the particular estate so limited has vested in and as to the person or persons entitled to it on April 20. 1962;

provided, that this sentence shall not apply in the construction of any instrument as to any child who is over the age of eighteen (18) years at the time of his or her adoption and who is adopted after the death of the maker of the instrument.

(b) When an adopted child is related by blood to the parent or parents by adoption, he or she and his or her descendants shall be entitled to inherit from and through the parent or parents only as an adopted child or descendants of an adopted child and not by virtue of the blood relationship.

3. R.I.G.L. § 33-1-1: **Real estate descending by intestacy to children or descendants, parents, or brothers and sisters.**

– Whenever any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in equal portions to his or her kindred, in the following course:

(1) *First to his children or their descendants, if there are any,*
(2) *Second if there be no children nor their descendants, then to the parents in equal shares, or to the surviving parent of such intestate.*
(3) *Third if there is no parent, then to the brothers and sisters of the intestate, and their descendants.*

4. R.I.G.L. § 33-6-30: **Partial intestacy.**

– All real and personal property, not devised or

bequeathed in the last will and testament of any person shall be distributed in the same manner as if the person had died intestate.

Statement of Material Facts:

A. Sought for Review of State Court Judgment:

Final Opinion of the Rhode Island Supreme Court: Fleet National Bank *et. al.* v. Janet Hunt *et. al.*, No. 2005-204-Appeal. (PM02-6899). Date Entered: April 7, 2008.[5]

B. Federal Questions: How Raised, How Presented, and How the Courts Responded:

Federal questions now raised were addressed, but not identified as being "federal" in the joint Rhode Island Superior Court briefs,[6] and in the petitioner's Rhode Island Supreme Court briefs and petitions. The need to identify them as being "federal" became evident as a consequence of the Supreme Court's decision. It was not anticipated that the Supreme Court would depart from historic common law, state, and federal precedents. For the most part, both Court's simply ignored the existence of the petitioner's arguments.

1. **Federal Question One: The Testator's Right to Have His Intentions Later Honored as an "*Unalienable*" or Pre-Existing Right as Affirmed by the Declaration of Independence, the Common Law, and Court Precedents.**

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[5] Appendix: pages 22-37.

[6] Petitioner with sisters and cousins presented in Superior Court a joint brief written by their attorneys David Stractman and John Pharr. This brief is not in the Appendix.

The Supreme Court overlooked the existence of the petitioner's arguments for intention. This issue, while not called "federal" was clearly presented as being an "*unalienable*" or pre-existing right that supersedes State authority,[7] which then showed it to be of a federal nature. The Court essentially threw intention out the back door when it briefly and meaninglessly gave lip service to the idea that it was seeking intention,[8] while knowingly pursuing a different paradigm that incrementally changes law.

Ultimately, the Court treated Art Hadley as though he had truly died intestate. Consequently, his intentions no longer apply.

There are "no" evidences from the record to quote that demonstrates any responsible effort by the Court to determine testator intention.

2. Federal Question Two: The Rights of the Testator and of the Petitioner to have the Testator's Intentions Sought Out and Honored as a Right Arising from the Right for "*Due Process of Law.*"

The idea that searching for and effectuating testator intention is a "*due process*" right for both the testator and petitioner was not identified as being such in the prior arguments. However, the petitioner did clearly explain in his briefs and petitions that the correct method (*process*) is to first seek intentions, and that the Court's reliance upon previous precedents[9] as a

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[7] Appendix: Petitioner's Reply Brief, pages 65-66.

[8] Appendix: Fleet, page 29.

[9] Overridden decisions from three cases form the basis for the Rhode Island Supreme Court's ruling. Those being: Champagne v. Fortin, 69 R.I. 10, Rhode Island Supreme Court; Redmond v. Hanover, 484

substitute for searching for testator intention was incorrect.[10] Petitioner carefully demonstrated why his position did no violence to any statute, or to any case precedent.[11]

Ultimately, the Court, overlooked intention and through the misuse of case law,[12] re-affirmed its commitment to the incremental changing of law, and a continuation of the new analysis "*process*" for construction cases.

The Court incorrectly represented the petitioner when it stated that the *"..., appellants urge this Court to overrule the law set forth in prior cases ..."*[13] The Court offered no analysis as to, "Why this assessment was correct?" Consequently, there is no record to quote.

3. Federal Question Three: The Trustee's Payments of Fees to Himself from the Principal of the Trusts as Being a Violation of Testator Intention.

Petitioner thoroughly addressed this issue in briefs, *two specific audit request petitions*, oral arguments, and in his reargument briefs.[14] The Supreme Court absolutely failed to acknowledge, or address this issue

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A.2d, 906, Rhode Island Supreme Court; Tinney v. Tinney, 799 A.2d. 235, Rhode Island Supreme Court.

[10] Appendix: Reply Brief: pages 65-66, & 75; 1st Reargument Petition: page 106.

[11] Appendix: 1st Brief, (not supplied); Reply Brief: Reargument Petition, page 106.

[12] The improper use of case law was amply addressed throughout all of the petitioner's writings. In particular see in Appendix: Reply Brief: pages 65-66, & 75; First Reargument Petition: page 106.

[13] Appendix: Fleet, page 28.

[14] Appendix: Reply Brief, pages 77-78; 1st Audit Petition, pages 83-85; 2nd Audit Petition, pages 86-94; 1st Reargument Petition, pages 108-109.

in any fashion in any of its writings. Interestingly, it did not affirm or deny the two audit petitions. Consequently, there is no Court record to quote.[15]

C. Material Facts:

1. Fleet National Bank[16] petitioned the Superior Court of Rhode Island to construct three trusts that had vested due to the death of Sarah Louise Hadley, the daughter of both trust makers on January 3, 2002.
2. Two of the trusts were Art Hadley's. He being this petitioner's great-uncle. Those being:
   a. January 24, 1933, Testamentary Trust created by his will, and
   b. January 15, 1936, Living Trust.
3. Both trusts were modified several times by codicils. The December 9, 1940 codicils, changed Art Hadley's initial distribution plans from one where his children would receive his trusts upon vesting, to one which made his children to be lifetime trust beneficiaries with an ultimate distribution for his biological grandchildren.
4. Francis Hadley's trust was established by her February 12, 1965 will. This petitioner made and makes no claims for it.
5. Art Hadley died May 27, 1941 at age fifty-six.
6. Art Hadley was survived by his wife, Frances E. Hadley, and two children, Thomas P. Hadley and

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[15] Appendix: Reply Brief, pages 77-78. 1st Audit Petition, pages 83-85. Reply Audit Petition, pages 86-94. 1st Reargument Petition, pages 108-109. This issue has been identified to preserve the petitioners' right to present it should their *writ of certiorari* be granted.

[16] Fleet National Bank has since been acquired by The Bank of America.

Sarah Louise Hadley.

7. Frances E. Hadley died on August 25, 1968.
8. Francis E. Hadley was survived by her and Art's two children Thomas P. Hadley, and Sarah L. Hadley.
9. March 8, 1962, Thomas P. Hadley married Betty Partridge, a forty-one year old widow from England. She had two daughters: Lucille - seventeen, and Janet - eighteen.
10. March 11, 1976, Thomas Hadley adopted Betty's now married daughters now in their thirties so that they could inherit Art Hadley's trusts. Their names now being Janet Stearns and Lucille Foster. Janet later divorced and remarried. She is now Janet Hunt.
11. Thomas Hadley died in 1993 survived by his wife Betty, and her daughters Janet Hunt and Lucille Foster.
12. Sarah L. Hadley died unmarried and without issue on January 3, 2002.
13. Sarah Hadley's death vested the trusts.
14. The parties and their claims to Art Hadley's Trusts:
    a. Eleven blood heirs-at-law who are equally related to Art Hadley. They are his great-nephews and great-nieces through their grandmother, Una Hadley Gay, who was Art Hadley's whole blood sister.
        1) Nine settled and are now respondents.
        2) Two, the appellant petitioners, refused to settle claiming to be 1/11th heirs.
    b. Thomas Hadley's adult adopted daughters Janet Hunt and Lucille Foster.
    c. The estate of Thomas P. Hadley.
    d. The estate of Sarah L. Hadley.

e. The "1941" heirs who are either the heirs-at-law or beneficiaries of either Art Hadley's wife and children. His wife and children would have been his heirs-at-law the day he died, if he had died without a will.

15. March 9, 2005 the Superior Court ruled against the blood heirs-at-law of both Art and Frances Hadley.[17]
16. The Rhode Island Supreme Court accepted this case on appeal.
17. January 24, 2007, under the leadership of the Retired Chief Justice of Rhode Island, the Honorable Joseph Weisberger, all parties entered into a settlement[18] with the single exception being this petitioner, who for studied reasons, and reasons of conscience could not accept the settlement. His claimed portion of 1/11th of his great-uncle's trust was ordered to continue in trust. Later, the petitioner's sister, Wylma Gay Cooley, was allowed to leave the settlement. Her claimed 1/11th portion was then also continued in trust.
18. The Rhode Island Supreme Court ruled against Ronald Gay and Wylma Gay Cooley on April 7th, 2008.
19. Petitioners' appeal for re-argument was denied on May 7, 2008.

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[17] Judge Rubine's Superior Court ruling exists in three editions. Noteably: 1) March 9th, 2005 Bench Decision; 2) April 15th, 2005 Order; 3) June 24th, 2005 Final Judgment. Appendix: pages 2-21.

[18] The mediated settlement orders are not in the Appendix.

Amplified Argument for a Writ of Certariori:

A. The Need for a Federal Review:

Petitioner respectfully prays for *certiorari.* His construction case is important to America for reasons greater than his own.

In 1999 the Social Welfare Institute of Boston College presented a study that concluded that America is entering into a period of time (1998 - 2052) in which the largest ever, intergenerational wealth transfer is occurring. Three different economic models predicted the following values for transferred wealth: 41 trillion, 72 trillion, or 136 trillion dollars.[19] The ultimate value to be realized is debatable, but one fact is certain - serious money will change hands. Without question, much of this transfer will be through wills and trusts,[20] and with the unresolved turmoil presently residing in the American Judiciary, and society over case law the stage is set for trouble. [21]

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[19]Paul G. Schervish & John J. Havens. Millionaires and the New Millennium: New Estimates of the Forthcoming Wealth Transfer and the Prospects for a Golden Age of Philanthropy. Social Welfare Research Institute, Boston College, Boston, Massachusetts, (1999).

[20] Many, if not most, of today's existing trusts were written by testator's who could not foresee, and did not address how to disperse their trusts in the light of today's social problems. Now, more than ever, Court's need to search for, effectuate, and then protect testator intentions from those who seek to artificially join legacies.

[21] John A. Stormer, Betrayed by the Bench, Florissant, Missouri: Liberty Bell Press, (2005). This insightful and accurately researched treatise studies the problems associated with the judiciary's new emphasis upon case law solutions for difficult cases, and the inevitable conflicts and problems now arising as this approach is imposed upon American laws that have their anchor roots "deep" in the soil of common sense, "*unalienable rights,*" natural justice, and the common

Lest it be thought that this assertion is overblown, petitioner respectfully notes that in the 2nd Amendment case recently decided by this Honorable United States Supreme Court,[22] Justice Scalia, writing for the majority, and Justices Stevens and Breyer who wrote their own dissents, argue with each other in their writings over this very same issue.

Petitioner rightfully concludes, that, if this same said issue that he argued, and now presents has been published and recognized as an unresolved controversy existing between the Honorable Justices of the United States Supreme Court,[23] it then, must be an issue of great concern for all Americans, and, consequently, needful of a federal review.[24]

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law.

[22] District of Columbia *et al.* v. Heller, No. 07-290, 554 U.S.____, United States Supreme Court, (2008).

[23] District of Columbia ... : Justice Scalia decries both the practice of, and Justices Stevens apparent overreading of case law, pages 49-54. On pages 62-63 he decries the practice of, and Justice Breyer's apparent belief and practice of "*a judge-empowering 'interest-balancing inquiry.'*" (The idea that it is appropriate for a judge to change laws in the interest of a greater social good. Appendix: Reply Brief, page 65) Not to be outdone, Justice Stevens essentially argues that because the Court decided *Miller*, it, and its possible applications are now the unquestionable law that cannot even be considered as being deficient (Justice Stevens' Dissent, page 43). He also reproached the common law. (Stevens, page 46). Justice Breyer's dissent is essentially a justification of the idea that "*needs and burdens*" need to be weighed to decide the case. (Justice Breyer's Dissent, page 32).

[24] This issue affects all Americans. Many are aware of the problems facing the judiciary, but in the insignificant position of being just one of approximately three hundred million people, we have little recourse. Many believe that these problems will have little or no effect upon themselves personally, until being rudely awakened when an effect happens, as in this petitioner's case, when he was judged to not be an heir of the intentions of his blood great-uncle as a consequence of the improper use of "case law." Consequently, this petitioner believes that he, in this position unique to himself alone, has had placed upon himself a responsibility to defend not only his historic American

B. A Brief Overview of Essential History:

1. The Trust Maker and His Trusts:

a. Art Hadley, a responsible and successful Providence, Rhode Island entrepreneur died May 27, 1941, at age fifty-six. His death certificate reveals that he was, during the time of the creation of his trusts, a very sick and dying man. The causes of his many maladies are speculation, but it is known that he was gassed by the Germans in World War I, and that he suffered for the rest of his life.

b. The January 24th, 1933 Testament: Art Hadley instituted a testament (January 24, 1933) that would make specific bequeaths to his wife, Frances, and his two children, Thomas and Sarah, and others upon his death. It would also create a trust from the rest, residue, and remainder of his estate. This trust would be eventually distributed to his children, and possibly others during their lifetimes upon certain vesting requirements. This testament made specific identifications of various properties including his company in England, Hadley Limited.

c. The January 15th, 1936 Indenture: Three years after writing his Testament, Art Hadley made an indenture (The Living Trust) with the Blackstone Canal National Bank of Providence[25] for his present purposes on the 15th of January 1936. This trust was funded by the sale of certain identified stocks that he owned in

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freedoms, but the American freedoms of countless people who do not have the resources, or knowledge to stand up to these types of abuses, and losses of property rightfully theirs.

[25] Appendix: page 136.

Hadley Limited. Art Hadley never refers to this document as a testament. However, it was designed to continue after his death.

d. The December 9th, 1940 Final Codicils:

On December 9th, 1940, Art Hadley instituted two codicils, one for each trust. The codicil's distribution plans made Art Hadley's children into lifetime trust beneficiaries. They also specified that when the last of his children died, his estate was to be sold and distributed *"in fee simple"* to his children's issue. All of his writings repeatedly specify "issue." An undeniable indication of his intention to benefit "only" his "biological" issue thus forever excluding adopted children.[26]

2. Brief overview of essential context:

a. Ways in which the trusts are the same:

The initial pre-December 9th, 1940, codicil distribution plans were exactly the same for each trust. They both had vesting requirements to be fulfilled before Thomas and/or Sarah and any possible others could inherit. Each writing also had other codicils prior to the last one, but those codicils have little relevance.

Both trusts received on the 9th of December 1940, final codicils that are identical except for necessary differences because one was an indenture and the other a testament. The final codicils radically changed Art

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[26] Appendix: Fleet, page 29. Chief Justice Williams, "*Unfortunately, the trust itself is silent about the definition of issue.*" The Chief Justice here reveals his failure to understand Art Hadley's intent from Art Hadley's use of terms.

Hadley's original distribution plan to one where his children would become lifetime trust beneficiaries, and upon the death of the last of his children the trusts are to be sold and the principal in fee simple is to be awarded to Art Hadley's biological grandchildren.

Concerning congruency between the trusts. The two trusts have within them language that ties them together, and specific indications that reveal that they should be, if necessary, construed together. [27]

b. Ways in which the trusts are different:

The trusts are like two pieces of a puzzle. They each contain specific instructions that directly bear upon the questions being considered, but some of the instructions are in the one trust and some in the other. For this, and other reasons, petitioner argued that the trusts should be construed together.

Differences include those arising from their essential character, for instance the Living Trust refers to itself as an "indenture," and the testament refers to itself as a "last will and testament," and, as also mentioned, other defining instructions that when construed together paint a very clear picture of Art Hadley's secondary distribution plans.

The most obvious difference is that the Living Trust contains "two" failure clauses. The Rhode Island Supreme Court, while refusing to call this a construction case, partially constructed the first failure clause by picking from it those non-contextual parts best suited to its goals, while completely ignoring its contrary aspects.[28] The Court also ignored the

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[27] Appendix: Reply Brief, pages 66-77. 1st Petition for Reargument, pages 95-102.

[28] Appendix: Fleet. Chief Justice Williams carefully avoids applying

existence of, and implications of the second failure clause.

Another important, but overlooked, difference between the two trusts is that the Testament in Articles EIGHTH and NINTH strictly limits the inheritance interests of Art Hadley's wife and children to being able to inherit by his expressed terms "only." There is no other way by which they can inherit.

When the Honorable Rhode Island Supreme Court awarded Art Hadley's Testamentary Trust to his now long dead wife and children, the "1941 heirs," because of a case law from a former trust that had similarities, **but also substantial differences**, it violated Art Hadley's specific intentions that his immediate family cannot inherit by intestacy.

C. Detailed analyses as to, why it is, that the Rhode Island Supreme Court improperly ruled.

1. Testamentary Trust award to the 1941 heirs.

May a case precedent be called "the law" when its peculiar causal circumstances are significantly different from the circumstances of a case to which it is applied?

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the "C" word (construction) to this case. He mentions it once in a footnote when referring to Frances Hadley's trust (page 23). He uses the word "interpretation" instead of "construction" on page 29. He does use the "C" word concerning the "... *Court's primary focus when construing a statute* ...," on page 31. The word does appear in the decision when statutes or case law conclusions are quoted that (unfortunately) contain it. **The point is this - Chief Justice Williams absolutely refused to call this case what it was - that being, a "construction" case!**

The Testamentary Trust was awarded by the Rhode Island Supreme Court to the "1941 heirs" because it considers that the law is that trusts with lapsed legacies are to be automatically resolved with a resulting trust that retroactively awards the *testator's* estate to those who were his heirs on the day that he died even if those heirs are also themselves now dead. This sterile "one size fits all" case law approach completely bypasses and denies testator intention.

"**No**" act of the Rhode Island Legislature has made this idea into law. The idea that this is the law in Rhode Island arises from two Rhode Island Supreme Court cases known as Champagne and Redmond.[29],[30]

These trusts are slightly similar with Art Hadley's trusts, in that they were created for the lifetime benefit of certain people, and that upon the death of the last of those, they were to be distributed to the beneficiaries children. And, then, as now, there were no children. Because those testatrixes left no indications as to what to do if their desires failed, the Court decided that a trust must result to the benefit of those who would have been the testatrixes' heirs on the day that they, the testatrixes, died. The Court essentially treated them, and then, awarded their estates as though they had died intestate. Because of the similarities of those cases to this petitioner's case the Court automatically created a resulting trust in that this is "now" the states law.

"However", there is a significant **causal** difference

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[29] Appendix: Fleet, page 28. Chief Justice Williams clearly affirms that he believes that case decisions are the law when he states, "*Rather, appellants urge this Court to overrule **the law set forth** in prior cases ...*"

[30] Champagne v. Fortin, 69 R.I. At 20, 30 A.2d at 843., and, Redmond v. Hanover, 484 A.2d 906.

between those two cases and Art Hadley's that the Court refused to acknowledge and address, ***and this difference makes all the difference and demands an answer!*** In both Redmond and Champagne the Rhode Island Supreme Court carefully explained that they were *resorting to a resulting trust* ***"because"*** *they could find no further intentions.*[31]

In contrast, Art Hadley left clear instructions in both trusts that clearly indicated from his own actual words, and also by what he did, as to what to do, if his first desire failed. The Rhode Island Supreme Court deliberately refused to ask itself that historical precedent set question of, *"What would be Art Hadley's intentions?"* **If case law conclusions set the standard, as the Rhode Island Supreme Court so affirms, this Court failed to follow the example that it set for itself, in Champagne and Redmond, by its failure to search for testator intentions!**

This Court, by imposing a solution imported from other cases upon a case in which its peculiar causal circumstances makes the imposed solution to be inapplicable has then created a conflict with itself, by its own misuse of its own case laws, by ignoring the differences between the causal circumstances of the first to the second.

May a Court ignore its essential and traditional responsibilities because the

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[31]In Champagne v. Fortin, page 6, *"It is pertinent ... that such resulting trust does not arise by reason of any actual intention ... but by reason of a lack of any intention ..."* In Redmond v. Hanover, page 5, *"As the testatrix did not clearly indicate her desire ... the circumstances that have arisen ... remain wholly unprovided for in her will. ..."*

precedents of two cases that it calls "the law" seem to offer a quick solution even though centuries of other existing precedents contradict the two, including precedents from the United States Supreme Court, and the two do violence to the others?

The first responsibility in construction cases is to *"... ascertain the testator's intention as disclosed by the language of the will and then give effect thereto, ..."*[32] After failing to ask, *"What would be Art Hadley's desire in these present circumstances?,"* the Court then failed to search for intention.

Ignoring centuries of case precedents from Rhode Island[33], other jurisdictions, *and even the United States*

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[32] Dodge v. Slate R.I. 191, 43 A.2d, 242. (1945). Chief Justice Capotosto: *"The following two rules of testamentary construction are well established with us: First, the primary rule is to ascertain the testator's intention as disclosed by the language of the will and then give effect thereto, unless it be contrary to some established rule of law. Second, where the testator used familiar legal words, it must be presumed, in the absence of clearly indicated contrary intent in his will, that he used them in their ordinary legal sense."*

[33] Rhode Island Supreme Court cases from: 1874, 1928, 1941, and 1961 demonstrate that Rhode Island has a traditional "*process*" of honoring and effectuating intention. It has a precedent history that rules of law are to help, and not defeat intention, in fact, the rules are subservient to intention. Henry B. Rodgers et al. v. Daniel Rodgers et als., 11 (R.I.) 38, (1874). *"... the rule itself is always subservient to the intention of the testator;" "The intention of the testator is the first and great object of inquiry, and to this object technical rules are, to a certain extent, made subservient.* 4 Kent's Comm. 534." McCanna *et al.* v. Hanan *et al.* No. 825, 49 R.I. 349, 142 A. 609, (1928). This entire case is about determining intention. Industrial Trust Co. v. Hall, 66 R.I. 201, 18 A.2d 629, (1941). *"... In construing this will, it is the duty of this court to give effect to the intent of the testator as disclosed therein be it in conformity with the law. Sawyer v. Poteat, 90 R.I. 51, 153, A.2d, 541."* Rhode Island Hospital Trust Company v. Hopkins 93

Supreme Court,[34] the Court failed its first responsibility

R.I. 173, 172, A.2d, 345, (1961) *"... Attempting to answer the first question it may be said of any word or phrase in a will the meaning of which is in doubt that the intention of the testater should be sought.* ***Such intention should be sought in the will itself and if not found there, then in circumstances outside of the will.*** *...Rhode Island Hospital Trust Co. v. Beckford, 67 R.I. 492, at page 499, 25 A.2d ...the court said: The fundamental rule in construction of a will is to determine the intention of the testator as expressed in the particular will under construction and to find the effect to that intention, if not in violation of law. As Story, J. said in Sisson v. Seabury, 1 Summ. Rep. 235 at page 239, Fed.Cas.No. 12,913, 'the intention of the testator is the pole star to guide and govern the Court.* ***This principle needs no further citation of authorities for it has been repeatedly stated and applied in our decisions.'"***

[34] The U.S. Supreme Court has, for centuries, upheld that finding the intention of the testators is the first responsibility. Following are three of the countless and un-contradicted U.S. Supreme Court decisions that illustrate this fact. One from each of three centuries.

1700's: Court of Errors and Appeals of Delaware, (This Court existed during the time of transition to the U.S. Constitution.) Robinson et al. Appellants, v. The Lessee of Adams, September, 1788, 4 U.S. Append. XII. *"The true construction of a will is to be collected from the words; and is not to be affected by collateral circumstances; ... This rule cannot be departed from. The security of property, and the order of society, depend on an observance of the laws. ... It is very credible, that when a person undertakes to make a will, he means to dispose of all of his property; ..."*

1800's: Doe, Lessee of Poor, v. Considine. December 1867, 73 U.S. 458, *"In the construction of a will the first great rule-one that should control and govern all others-is that the court should seek the intention of the testator from the four corners of his will. All technical rules, from Shelley's case down, were established by courts only for the purpose of effectuating such intention. But* ***it is easy to pervert the testator's intention by an astute application of cases and precedents,*** *of which the present case is the last example of many which have preceded it, and where the testator's intention is entirely defeated by the application of rules intended to effectuate it. ... ... It often happens that legislative acts require the same liberal rules of construction as wills, where the testator is presumed to be inops concilii. It only requires the reading of the fifth section of the statute before the forth in order to effectuate the intention of the Legislature, and to clear it from* ***the absurdity of giving an***

by resorting to an easy quick fix case law solution.[35]

Has a Court violated the testator's and his whole blood heir's fifth and fourteenth amendment rights to "*due process of law*" when it has arbitrarily chosen to change the historical "*processes*" of law by departing from centuries of past practice?

Does a testator have a right to have his

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interstate's estate, not to his next of kin, *but to his brothers and sisters, instead of his own children.*

1900's: Hanna Fitchie, et. al v. Cecil Brown, et al 211 U.S. 321, December 7, 1908, *"It is the intention of the testator that is to be sought, and such intention is not always found to have been directly, and in so many words, expressed in the will. An intention, which is implied from language actually used and from facts actually appearing in the will is to be carried out, provided it does not violate the law. An intention so implied is as good as an intention more plainly and in direct terms expressed. ..."*

[35] The Rhode Island Supreme Court imposed a "one size fits all" quick fix solution. Justice Story's wisdom addresses quick fix solutions in 1 Sumn. 235, 22 F.Cas. 238, *"The difficulty of construing wills in any satisfactory manner, renders this one of the most perplexing branches of the law. The cases almost overwhelm us at every step of our progress; and any attempts even to classify them, much less to harmonize them, is full of the most perilous labor. Lord Eldon has observed, that the mind is overpowered by their multitudes, and the subtilty of the distinctions between them. Jesson v. Wright, 2 Bligh, 50.* ***To lay down any positive and definite rules of universal application in the interpretation of wills, must continue to be, as it has been, a task of extraordinary difficulty.*** *The unavoidable imperfections of human language, the obscure and often inconsistent expressions of intention, and the utter inability of the human mind to foresee the possible combination of* (future) *events, must for ever afford an ample field for doubt and discussion, so long as testators are at liberty to frame their wills in their own way, without being tied down to any technical and formal language. It ought not, therefore, to surprise us, that in this branch of the law the words used should present an infinite variety of combinations, and thus involve an infinite variety of shades of meaning, as well as of decision."*

intentions later honored as an "*unalienable*," or pre-existing right as affirmed by the common law, The Declaration of Independence, and centuries of court precedents?

It is here that the violation of the right to *"due process of law"* is clearly illustrated.

The Court has clearly departed from centuries of the established precedent set *"process"* that holds that the testator's intention is to be found from within his actual words.

The same studied choices that have brought this petitioner to this Honorable U.S. Supreme Court were originally made with a trusting presumption that the Rhode Island Supreme Court judges its cases in a fashion that respects the historical foundations of first determining a testator's intent as required by all jurisdictions.

It so seems to this petitioner that he, testators, and others have a right to expect a lasting stability in the *"processes"* which Courts employ. This is especially important because the testators of the past wrote their wills when finding intention was the Court's intention, and their obvious historical desires should be protected.

In that the *"process"* of the law has been changed without good cause, this petitioner has every reason to believe that his, and his great uncle Art Hadley's rights to *"due process"* have been denied.

There are no cases supporting or denying this affirmation that the petitioner and his great uncle have been denied their rights to *"due process of law"*, because ***this question to the U.S. Supreme Court is a question of first impression***.

May a State Supreme Court approach law and rule in one fashion, while other jurisdictions have a different approach and different rulings from the same or similar laws?

When different Court's approach the same laws differently, and, consequently, rule from those same laws differently an issue of federal interest is revealed.

It has already been demonstrated that the Rhode Island Supreme Court has:

1) Bypassed testator intention when the U.S. Supreme Court considers this to be the first responsibility.
2) Misapplied case precedents by refusing to consider the causal differences between those precedents and the case to which applied, when other jurisdictions consider the reasons for the precedents before making new applications, and
3) Refused to consider contradictions between the case precedents that it is citing for its reasons, even though cases from its own and other jurisdictions including the United States Supreme Court contradict the cases that it uses.[36]

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[36] Countless examples abound that other states consider testator intention as the "*pole star*" to guide the Court's choice. If it is a fact that other states do not, this then only further serves to make the petitioner's point. For instance: In an adult adoption case involving several states the Court of Chancery of Delaware, New Castle County ruled against an adult adoptee, "Why?" Testator intention. Barker Trust Agreement, 2007 WL 1800645 (Del.Ch.). Quoting from, Estate of Silsby, 914 A.2d 703, Supreme Judicial Court of Maine, (2006) page 5, "'*A court must interpret the will within the four corners of the*

May a State Supreme Court chose to overlook other studies of law and case law precedents that are contradictory to its own aims when those studies and precedents are legitimate to the argument and unopposed by any other briefs or arguments?

The Court was not fair and consistent with its use of case law. The Court ignored, without any explanation, the petitioner's good presentations from case law evidences for his position concerning multiple document estates.

Petitioner demonstrated from: 1) studies of law, 2) case precedents, and, 3) from the exact words, and 4) from the specific design of Art Hadley's two trusts that Art Hadley intended, and that it is also to be, that multiple document estates are to have their documents construed together as being one.[37]

The Court absolutely failed to address that these two trusts should be construed together. The opposing counsels deliberately did not address this issue. Their strategy being to totally ignore it, and passively hope that the Court would do the same. Which it did!

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document but may use the context of the entire will to interpret specific sections.' Estate of Wilson, 2003 ME 92, 11, 828 A.2dn784,786. 'A court may resort to extrinsic evidence to discern the intention of the testator if the will is ambiguous.'" In Estate of Gonzalez, 855 A.2d 1146, Supreme Judicial Court of Maine, (2004) page 4, the Court noted, "*We have long subscribed to the principle 'that the right of testamentary disposition is considered to be of great importance.' Estate of Foss, 160 Me. 214, 219, 202 A.2d 554, 557 (1964). This principle has resulted in a "well-known policy of the courts to uphold wills and not destroy them.*"

[37] Appendix: Reply Brief, pages 66-77. 1st Petition for Reargument, pages 95-102.

In its divide and conquer approach the Court divided the two trusts, and treated them as two separate entities with an illogical presumption, (not supported by any studies of intention), that because Art Hadley wrote two different trusts, he must have then intended a different outcome for each one.[38]

An enlightening fact is that when construed together, these trusts then "easily answer" all of the challenging questions about, "*What would be Art Hadley's intentions for the present circumstances?*"

They are complimentary, without "**any**" contradictions, in every way. The second builds upon the first, in a natural order that would be expected from their developmental history.[39]

When construed separately there is a loss of substantial context, because each trust presents opposite halves of the picture of what would be Art Hadley's intentions. When construed separately, they become slightly incongruent, and lose the clarity that is theirs when construed together.

One of many good examples that these trusts are to be construed together is that each has its own unique failure clauses that are quite different from each other.

The Testament has failure clauses that address the fact that Art Hadley's wife and children can only inherit by the express terms of the trust, and that there is no other way. Those Articles being:[40]

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[38] Appendix: Fleet, Superior Court, page 13. Judge Rubine presented the idea that because Art Hadley wrote two different trusts he must have then intended two different distribution plans. This illogical and unsubstantiated assumption was foundational to his decision.

[39] Appendix: Reply Brief, pages 71-73. 1st Reargument Petition, pages 96-102. The trusts are to be construed together for: reasons of intention, reasons from precedents, and reasons from studies of law.

[40] Appendix: Testamentary Trust, page 130.

Article EIGHTH: *"I herby declare that my omission to make any other or further provisions in this will for my children, Thomas P. Hadley and Sarah Louise Hadley, or for any child or children that I may have, or for the issue of any deceased child or children of mine, is intentional and not occasioned by accident or mistake."*

Article NINTH: *"I hereby declare that the bequests, devises and other provisions hereinbefore made to or for the benefit of my said wife, France E. Hadley, are in lieu of dower and of all other interest she may have in and to my estate."*

The Living trust's first failure clause makes it clear that heirs-at-law are to be Art Hadley's heirs of his blood, (not his wife's, nor his children's, if his children's heirs are not biological issue), and that the time to chose heirs is at the time of the death of the last of his children. This failure clause removes from the so called "1941 heirs" any possibility of inheriting.

The intentions of the two trusts are so complementary it is almost unbelievable. Yet, somehow the Court managed to make them to look contradictory.

The Court's Testamentary trust award to Art Hadley's long dead wife and children absurdly[41] forced

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[41] In Doe, Lessee of Poor v. Considine, 1867, 73 U.S. 458, Mr. Justice Grier, in his dissent, addressed the *"absurdity"* that can occur when laws that are actually designed to effectuate testator intention are incorrectly and forcibly applied to trusts without considering the intentions of the Legislature. **Thus creating a situation where next-of-kin do not inherit and less related people do. Thus defeating testator intention.** This same situation here exists where every non-relative who made a claim for Art Hadley's trusts inherited something, and the whole blood heirs-at-law inherited nothing.

Art Hadley's estate by his blood-heirs-law, to then be inherited by non-heirs, grievously violating Art Hadley's clear intentions.

Blackstone noted that one way to evaluate whether a decision is good, or not, is to "*consider the effects and consequences.*" Historical precedents clearly indicate that whole blood is preferred over half-blood, and half-blood over no blood. Rhode Island is establishing a new tradition in law where no-blood inherits over any-blood. There is something wrong with this picture. The "*effects and consequences*" are wrong.[42] How did this happen?

1) Misuse of case law, as demonstrated.
2) A refusal to "construe" the two trusts together.
3) A denial of intention by changing from the correct historical "*process*" that "constructs."
4) A complete failure to "construct."
5) A denial of this petitioner's and Art Hadley's rights to "*due process of law.*"[43]

2. The Living Trust award to the adult adoptees

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[42] Appendix: Reply Brief, pages 52-64. Blackstone's wisdom.

[43] Chief Justice Williams' incorrect assertion that the petitioner argued to "*overrule the law*" is one of many indications that the Court did not seek to understand this petitioner's well presented position. Petitioner carefully demonstrated that while he disagreed with Redmond and Champagne, he was not seeking to overturn those cases, because his case was so dissimilar with those, and, consequently, they do not apply. This assertion clearly demonstrates the Court's belief that their prior cases create for the State of Rhode Island new laws for all following cases with any degree of similarity irrespective of any causal differences, making them to be *de facto* statutes effectively bypassing the Legislature and the Governor. *This travesty effectively removes from citizens their right to input into the law making process, thus effectively removing from them one of their core American privileges!* **This issue most certainly needs federal review**.

Janet Hunt and Lucille Foster.

Petitioner begins discussion concerning the Living Trust award to those who were artificially adopted into Art Hadley's legacy with an hypothetical example.

Suppose a legislature had enacted that:

"Highway construction workers are to wear shirts that are safe, and that florescent yellow is preferred."

In time, a worker went to Court because his yellow shirt was not "*florescent.*" He won! "Why?" His shirt, even though it was not *"florescent,"* was bright enough to satisfy the Legislature's intentions. The Justice then declared that, "*Yellow is OK.*"

In time another worker, with an incredibly faded shirt that was not safe, but still in the family of "*yellow*" went to court. He won! "Why?" Case law has stated that, "*Yellow is OK.*"

The Living Trust contains two failure clauses.[44]

Article FIRST, number 6: *In case of the total failure of all of the trusts hereinbefore provided for with respect to the final disposition of the principal of the trust estate or any shares thereof, the Trustee shall transfer, convey and pay over the principal of the trust estate, or such shares, as the case may be, discharged of these trusts, to and among those persons who would then be entitled to the personal estate of the settlor under the laws of*

[44] Appendix: Living Trust, page 139.

said State of Rhode Island had he then died intestate, a domiciled inhabitant of said state, according to the statutes of distribution then in force in said state, and in the shares and proportions provided by said statutes.

Article FIRST, number 7: *Anything to the contrary hereinbefore notwithstanding, if upon the expiration of twenty-one (21) years after the death of the last survivor of the settlor, his said wife and their children, Thomas P. Hadley and Sarah Louise Hadley, any share or shares of the trust estate shall remain undistributed, the trustee shall forthwith transfer, convey and pay over, absolutely, the then principle of such shares, as the case may be, to the person or persons then respectively entitled to the income thereof.*

Uniting the two trusts presents a strong, correct, and easy argument. However, petitioner intends to demonstrate from the Living Trust that the proper use of law and precedents demonstrates that his position is true.

The Court's ruling has created a dilemma in law that may adversely affect others (even in other states), in that, this present ruling now sets a new and bad precedent for multiple document estates that supports the divide and conquer approach rather than a unite and seek intention approach.

It is clear from all evidences that Art Hadley's first failure clause's appeal to use the Rhode Island "*statutes of distribution*" as if "*had he then died intestate*" is merely his method by which to select a second set of heirs. He is not declaring that intestacy is now his condition, as was earlier argued. In that this is his

method and not his condition, one must believe, for many reasons, that all of his intentions remain active including any that may be contrary.

There are "no" contrary intentions that limit this petitioner's claims. It is also a fact that there are "numerous" contrary intentions that apply to Janet Hunt and Lucille Foster. Art Hadley left his legacy to his biological "issue." Thereby, clearly and effectively excluding "any" adopted children from entering his legacy. This exclusion was not challenged. If adopted minor children were so excluded, what would one think that Art Hadley's intentions would be concerning those adopted into his legacy as "adults?"

For the mentioned reasons and others, it is clear that Janet Hunt and Lucille Foster are excluded by the terms of the Living Trust from inheriting. The Court agreed.

The Rhode Island Legislature defined the inheritance rights of adult adopted adoptees in R.I.G.L. 15-7-16 (a), which reads in part as follows:

> R.I.G.L. 15-7-16 (a): **Inheritance by and from adoptive kindred.** - (a) A child lawfully adopted shall be deemed, for the purpose of inheritance ... ..., the child of the parents by adoption the same as if he or she had been born to them in lawful wedlock. In the construction of any instrument, ..., a child so adopted ..., of the parent or parents by adoption, unless a contrary intention shall appear by the terms of the instrument ...; provided, that this sentence shall not apply in the construction of any instrument as to any child who is over the age of eighteen (18) years at the time of his or her adoption and who is adopted after the death of the maker of the instrument.

R.I.G.L. 15-7-16 (a) clearly states that those who are lawfully adopted are "deemed" to be the same as children born in lawful wedlock for inheritance purposes, ***"provided* (or unless)"**....

In the bizarre adult adoption case of Tinney v. Tinney,[45] the Rhode Island Supreme Court held that Kevin Jacob Koellisch Tinney, who was adopted while in his thirties by 84 year old Ruth Tinney, who later died intestate, was a legitimate heir-at-law with Donald Tinney, Ruth's natural born son.

May a case precedent be considered valid when it, in its original declaration, failed to properly respect the context of its specific case to the law, and it is then over inclusive, and technically, an error of law?

The initial practical consequence of the Court's ruling[46] was correct according to the actual words of the law, but Justice Boucier's precedent setting conclusion (slightly paraphrased),[47] "*the Legislature intended no*

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[45] Tinney v. Tinney, 799 A.2d 235, Rhode Island Supreme Court, (2002).

[46] The Court correctly ruled according to the strict letter of the law, but Kevin Jacob Koellisch Tinney should have been denied standing because Kevin's real mother was also still alive, and protesting, and her parental rights had not been terminated. For awhile Kevin had two simultaneously living legal mothers. How can this be? If the foundation from which all logical arguments are built upon is **"SO"** wrong, *"How can the final decision be right?"*

[47] Tinney. Correct and complete quote of Justice Bourcier, page 4, *"We conclude that the language of R.I.G.L. 15-7-16 (a) is clear and unambiguous, and therefore we must give the words of the statute their plain and ordinary meaning. It is clear that the Legislature intended the term "child" to mean son or daughter of the parent, regardless of age, and* ***that there was no distinction intended between the inheritance rights of a "child" adopted as a***

distinction between the inheritance rights of minor and adult adoptees," initiated an error of law.

This error then became Janet Hunt and Lucille Foster's prevailing theme argument.

Justice Boucier would have been correct to the law, and the causal circumstances had he restricted his conclusion's reach by stating that, "*the Legislature intended no distinction between the inheritance rights of adult and minor adoptees, 'in intestacy cases'.*"

The Rhode Island Supreme Court, despite good presentations to the contrary, was either unable, and/or unwilling to recognize, and correct this error.

May a case precedent be allowed to overreach and overrule a legitimate intention of a Legislature when that intention is expressly stated in the statutes?

Initially, Justice Boucier's overreaching decision did not overrule Legislative intention, but imposing it upon the Living Trust did. Having failed to limit his statement to its peculiar causal circumstances, he then rendered an over inclusive declaration that overreached Legislative intention that eventually overruled the law.

Judge Bourcier's statement has been quoted as a declaration of the Legislature's intention. But, specifically, one can easily understand from the plain and ordinary meanings of the words of the law, that the Legislature "does" intend that there "is" a distinction between minor and adult adoptees in inheritance cases. Judge Boucier's statement, absent context, is false!

Tinney did not question the second sentence of

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minor and "persons" adopted as adults."

R.I.G.L. § 15-7-16(a). This second sentence clarifies the rights of adopted children in "construction" cases. As noted, Chief Justice Williams was meticulously careful to "not" call this a construction case despite good arguments to the contrary. The Court labored to treat this case as though it were a true intestacy case without calling it one.

The Legislature set forth several discriminations in the second sentence. First, a contrary intention can exclude an adult adoptee from inheriting. There are numerous intentions contrary to Janet Hunt and Lucille Foster. If the actual terms of the trust exclude them, "*How can they then inherit?*" Secondly, the Legislature fully intended that a fulfillment of the following three contrary circumstances will categorically exclude adult adoptees from even being "deemed" as kindred in any sense. Those contrary circumstances being:

1. "... *The construction of 'any' instrument...*"[48] There are "two"[49] instruments. But, one is reminded they were not "*constructed*" they were "*interpreted.*"[50]
2. Adoption occurring at or over the age of eighteen (18). Janet Hunt and Lucille Foster were in their thirties when they were adopted.
3. The death of the instrument's writer prior to the adoption. Art Hadley died before Janet Hunt and Lucille Foster were even born.

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[48] Note: The law emphatically uses the word "**any**."

[49] If these instruments fail to be in the set of "any" to what set of instruments do they then belong?

[50] "*Windbaggery*." Major judicial distinctions obtained from insignificant nuances of words.

Janet Hunt and Lucille Foster perfectly fulfill every contrary condition except vesting, which is inapplicable.

It is obvious from the actual enacted words of the Rhode Island Legislature that it "**did**" intend to seriously limit the adoption rights of adult adoptees.

The Legislature clearly intended to prevent the artificial introduction of adult adoptees into the legacies of deceased testators. Again, in construction cases, adult adoptees are not to be "deemed" that means that they are not to even be "considered" as "kindred" in any sense.

D. Conclusion:

In bold defiance, the Rhode Island Supreme Court overreached, and overruled the intentions of its own State's Legislature.

1. By arbitrarily changing and departing from centuries of an historical "*process of law*," that first *"seeks and then effectuates testator intention."*
2. By overreaching and overruling legislative intent with an improper use of precedents.
3. By essentially treating precedents as *de facto* statutes, and in other ways as described.
4. By depriving petitioners of "*property*" (their inheritance) rightfully theirs.
5. By depriving petitioner's and Art Hadley of their fifth and fourteenth amendment rights to *"due process of law."*
6. By depriving Rhode Island citizens of their cherished American privilege to be involved with the law making process through personal contact with their representatives and governor.

Most certainly, this issue of Courts creating laws that override laws that have been both enacted and signed into law by a State's Legislature and Governor must be an issue of Federal interest.

Petitioner respectfully reminds this Honorable United States Supreme Court that this case is not "*just about*" his isolated equity case. The alleged violations of the principles of a good practice of law have seriously affected, are affecting, and will continue to seriously affect all Americans.

Petitioner respectfully prays for *Certiorari.*

Respectfully submitted on October 10th, 2008 by joint *pro se* petitioners:

Ronald Eliot Gay, and Wylma Gay Cooley